



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of:     Aquasis Services, Inc.  
File:            B-232053  
Date:            September 22, 1988

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### DIGEST

Protest that an award was made under a request for proposals on the basis of an improper technical evaluation is dismissed as academic when the agency essentially agrees with the protester and takes the only corrective action possible.

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### DECISION

Aquasis Services, Inc. protests the award of a contract to Golden Kel-Lac Uniforms, Inc. under request for proposals (RFP) No. F41800-88-R1201, issued by the Department of the Air Force for the fitting and alteration of military uniforms. Aquasis contends that the Air Force's technical evaluation of Kel-Lac's proposal improperly considered matters not contained in the proposal, that the evaluation was therefore sufficiently flawed to render the award improper, and that the Air Force should either award the contract to Aquasis or reopen negotiations with all offerors in the competitive range. In the alternative, the firm claims it is entitled to the costs of preparing its proposal.

By letter of August 26, the Air Force advised us that it agrees with Aquasis that there were problems in the agency's technical evaluation of proposals that might properly have been resolved through discussions. However, the Air Force also states that, in the course of reviewing the protest, it discovered problems with the specifications set forth in the RFP that it believes would have made it inappropriate to reopen negotiations or make an award under the solicitation, since it does not adequately reflect the agency's needs. The Air Force therefore proposes to issue a new RFP with revised specifications to remedy the defects contained in the solicitation at issue.

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With respect to the award to Kel-Lac, which was made on July 21, the agency states that since the contract period only ran for 2 months anyway, and there is an urgent need for the services, it would not be practicable to terminate it at this juncture; instead, the contract will be allowed to run until its September 30 expiration date. The Air Force states that in lieu of other corrective action, it will not exercise any of the four annual renewal options under the contract.

Since the Air Force has admitted error and proposed the only corrective action that we could have recommended under the circumstances, no useful purpose would be served by our consideration of the protest. See J. Skar Mfg. Co., Inc., B-213708, July 25, 1984, 84-2 CPD ¶ 110. Consequently, we dismiss it as academic.

With respect Aquasis's claim for reimbursement of the costs of preparing its proposal, our authority to allow the recovery of such costs is predicated upon a determination by our Office that an agency has acted contrary to law or regulation. 31 U.S.C. § 3554(c)(1) (Supp. IV 1986); Technology & Management Services, Inc., B-231025.4, June 1, 1988, 88-1 CPD ¶ 513. A decision on the merits of a protest is an essential condition to a declaration that the protester is entitled to the award of costs. Id. Since we have made no such determination here, we have no basis for awarding costs to Aquasis.

The protest is dismissed and the claim is denied.



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